

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

SHANAH ANTON NEWSOME, SR., pro se

Petitioner,

Case No. 3:06 CV 2464

-vs-

O R D E R

UNITED STATES OF AMERICA,

Respondent.

KATZ, J.

Defendant on October 12, 2006 filed a motion to vacate, correct, or set aside his sentence, pursuant to 28 U.S.C. § 2255. The Government has filed a motion to dismiss that petition (Doc. No. 3), which filing occurred on October 16, 2006 and no response has been received. The Court will grant the motion and dismiss without prejudice the motion pursuant to § 2255.

The Government is correct that there is docketed at this time an appeal with the Sixth Circuit Court of Appeals, Case No. 06-3762. In August, Newsome's appellate attorney filed a motion to withdraw as counsel and a motion for immediate consideration of dismissal of direct appeal and appointment of counsel for filing a motion pursuant to § 2255. Those motions are both still pending. A judgment of conviction is not "final" while the case is on appeal, thus depriving Petitioner here of the right to file a motion under § 2255. This Court simply does not have jurisdiction to consider the same, since collateral attack may be instituted only after a judgment of conviction is final. That not being the case, the Court will grant the Government's motion and dismiss Petitioner's motion filed under 28 U.S.C. § 2255, without prejudice.

IT IS SO ORDERED.

s/ David A. Katz  
DAVID A. KATZ  
U. S. DISTRICT JUDGE